FILED
JUL 5 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 78-59

ROBYN PRAETZ, PETER PRAETZ,
and ALLEN CHARLES, M.D.- - - Petitioners,

- VS -

PAUL Q. PETERSEN, M.D., Director,
Department of Public Health,
MURRAY C. BROWN, M.D., Commissioner,
Department of Health, City of
Chicago - - - - - - - - - - - Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Patrick T. Murphy, Esq.
GOLDBERG & MURPHY, LTD.
33 N. LaSalle - Suite 2300
Chicago, Illinois 60602
(312) 782-4530

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO._____

ROBYN PRAETZ, PETER PRAETZ,
and ALLEN CHARLES, M.D.- - - Petitioners,

- VS -

PAUL Q. PETERSEN, M.D., Director,
Department of Public Health,
MURRAY C. BROWN, M.D., Commissioner,
Department of Health, City of
Chicago - - - - - - - - - - - Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Patrick T. Murphy, Esq.
GOLDBERG & MURPHY, LTD.
33 N. LaSalle - Suite 2300
Chicago, Illinois 60602
(312) 782-4530

I N D E X

Opinion Below. 2

Jurisdiction. 2

Question Presented for Review. 3

Constitutional and Statutory Provision Involved. 4

Statement of the Case. 5-10

Reasons for Granting the Writ. . . 11-15

Conclusion. 15

Appendix A. 16-22

Appendix B. 23-30

Appendix C. 31-41

CASES:

Fitzgerald v. Porter Memorial Hospital, 523 F2d 716 (7th Cir. 1975). 13

Griswold v. Connecticut, 381 U.S. 484 (1965). 11

Gross et al., v. Brown et al., 70 C 1226. 7

Loving v. Virginia, 383 U.S. 1 (1967). 12

Mayer v. Nebraska, 262 U.S. 390 (1923). 11

Miller et al., v. Brown et al., 76 C 3600. 8

Pierce v. Society of Sisters, 268 U.S. 510 (1925). 11

Roe v. Wade, 410 U.S. 113 (1973). 12

Stanley v. Illinois, 405 U.S. 645 (1972). 12

STATUTES:

United States Constitution, Amendment 14. 4

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO._____

ROBYN PRAETZ, PETER PRAETZ,
and ALLEN CHARLES, M.D.- - - Petitioners,

- VS -

PAUL Q. PETERSEN, M.D., Director,
Department of Public Health,
MURRAY C. BROWN, M.D., Commissioner,
Department of Health, City of
Chicago - - - - - - - - - - -Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners respectfully pray that a Writ of Certiorari be issued to review the Judgment and Opinion of the United States Court of Appeals for the Seventh

Circuit entered on April 6, 1978 in cause No. 77-1870.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit is unpublished. A copy of that Opinion is attached as Appendix A.

JURISDICTION

The judgment for the United States Court of Appeals for the Seventh Circuit was entered on April 6, 1978 affirming the Decision of the Honorable Frank J. McGarr of the United States District Court for the Northern District of Illinois, Eastern Division holding that the right of familial privacy claimed by the Plaintiffs is not fundamental. Jurisdiction to review the Opinion and Judgment of the United States Court of Appeals is conferred upon this Court by 28 U.S.C.

1254 (1).

QUESTION PRESENTED FOR REVIEW

Whether the state may enact and enforce laws which prevent a father from being in the Delivery Room with his wife during the birth of their child by means of a cesarean operation when both the physician and hospital encourage the presence of the father without violating the parents' right to familial privacy and equal protection of the laws and the physician's right to due process?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 14:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Department of Health Regulation 11-7.5 provides:

"No lay visitor shall be given access to the operating room during surgery."

STATEMENT OF THE CASE

The Illinois Department of Public Health has promulgated a regulation which provides that "no lay visitor shall be given access to the operating room during surgery." (Illinois Department of Health Regulation 11-7.5). This has been interpreted both by the State and the City of Chicago so as to forbid "husbands and/or fathers from access to Labor-Delivery Sections and designated Operating Rooms in hospitals." (See Complaint, Appendix C, letters of Murray C. Brown, Commissioner, Chicago Department of Health of July 21, 1976 and September 7, 1977, Appendixes 1 and 5.)

Peter and Robyn Praetz, the Petitioners herein, are a married couple who in 1976 delivered a child by cesarean section. During that delivery (which

occurred in Boston, Massachusetts) Peter Praetz was present. He was present because both parents believe that child birth is a unique experience and that it is of paramount importance for both the father and mother to be present during the birth process. (See Complaint, Appendix C, Paras, 11 and 19).

After moving to Chicago because of employment necessities, Mrs. Praetz again became pregnant. Their physician, Dr. Allen Charles, M.D., a Petitioner herein, actively encouraged both parents to be present during the birth process (App. C, Paras. 4 and 10) and both parents again wished that the father be present. Michael Reese Hospital also actively encouraged the presence of fathers and toward this end had promulgated a regulation to insure the safety of the child and parents during the cesarean process.

(See Complaint, App. C, Para. 13 and App. 2). However, both the State of Illinois (Department of Health Regulation 11-7.5) and the City of Chicago (See letters of the Commissioner of the Chicago Board of Health of July 21, 1976 and September 7, 1977 attached to the Complaint, App. C, as App. 1 and 5) forbade the father's presence during a birth by cesarean means.*

* Between 1970 and 1977 there was confusion over just who was allowed into Delivery Rooms in Illinois. Prior to 1970 the presence of the father in Delivery Rooms had been forbidden. However, in that year, an Order was entered in the case of Gross et al. v. Brown et al., (No. 70 C 1226) holding such regulation unconstitutional. (The Order is attached to the Complaint, App. C, as App. 6).

Between 1970 and 1976 apparently fathers were allowed in the Delivery Rooms of those hospitals which permitted it. There was no discrimination made between normal delivery procedures and cesarean deliveries. It was pursuant to such a practice that Michael Reese Hospital had promulgated the regulation described above.

Because the hospital and the physician were unsure of their authority to have Petitioner Peter Praetz present during the birth, the Praetzs wrote the Commissioner of the Chicago Board of Health, concerning whether Peter Praetz could be present during the birth. They were informed by Dr. Murray Brown on September 7, 1977 that regulations forbade the

* (cont'd) In July, 1976 the Commissioner of the Chicago Board of Health wrote to Chicago Hospitals stating that "husbands and/or fathers are prohibited from being present during cesarean deliveries." (See App. 1 to the Complaint, App. C herein). Shortly thereafter, a suit challenging this regulation was filed in the United States District Court for the Northern District of Illinois. In that case the Honorable Alfred Kirkland issued a temporary restraining order permitting the father to be present during the cesarean birth. (Miller et al. v. Brown et al, No. 76 C 3600; See App. C Complaint, App. 3). Having received the relief they sought, the Plaintiffs in that cause did not pursue the matter.

father's presence in the Delivery Room.

Thereupon, Mr. & Mrs. Praetz and Dr. Charles sued pursuant to 42 U.S.C. 1983 seeking declaratory and injunctive relief claiming that their right to family privacy was violated by state and city regulations. On December 20, 1977 the Honorable Frank J. McGarr dismissed their Complaint (See Appendix B) stating at pp. 4 and 5:

"--The real reason in this case, then, if we follow Plaintiffs' urging, is whether or not the fact that the Plaintiffs, the attending physician, and a reputable hospital all agree that the father's attendance at the cesarean birth is desirable and can be accomplished safely, somehow increases the strength of the parents' wish sufficiently for that wish to take on the characteristics of a 'fundamental right.' We hold that it does not.

"This court sympathizes with the Plaintiff parents' desire to enjoy a familial experience with the encouragement and assistance of a competent physician and a reputable hospital, as well as it sympathizes with the frustration each of the

parties must feel in the fact of what might well be a short-sighted regulation. But the question present in this Motion to Dismiss is a matter to be controlled by the law, and not by sympathy."

REASONS FOR GRANTING THE WRIT

A review of the Decision below affords this Court the opportunity of further defining the boundaries of the right of familial privacy and the limits of State encroachment onto that right of privacy.

Previously this Court has defined some of those circumstances under which a family may order its affairs free from the interference of State machinery. In Mayer v. Nebraska, 262 U.S. 390 (1923) the Court allowed the parents to determine whether their children should study a foreign language without interference by the State. In Pierce v. Society of Sisters, 268 U.S. 510 (1925) the Court held that parents could direct the education of their children without the interference by the State. In Griswold v. Connecticut, 381 U.S. 484 (1965), the Court held that married parents could purchase contraceptives free from State

interference. In Loving v. Virginia, 388 U.S. 1 (1967) the Court held that individuals of different races could intermarry without the interference of the State. In Stanley v. Illinois, 405 U.S. 645 (1972) the Court held that unmarried fathers may have custodial rights to their children without unwarrented State interference. In Roe v. Wade, 410 U.S. 113 (1973), this Court again sanctioned familial privacy as against interference by the State.

The State of Illinois and City of Chicago*[2] have argued and both courts

*[2] During oral argument the city Respondent stated that they intended to institute procedures which would permit fathers in Delivery Rooms during cesarean births under certain circumstances. Pursuant to this purported regulation, they sought to have the case declared moot as to them. The Court of Appeals held that the case was not moot (Ftnte. 2 at p.2 of App. A). However, after the Order by the Court of Appeals, the City of Chicago apparently has decided against promulgating the regulation.

below have agreed "after a thorough analysis that the right of marital privacy did not include the right of either spouse to have the husband present in the Delivery Room." (See p.3 of Order of the United States Court of Appeals for the Seventh Circuit, App. A). The Court of Appeals went on to state:

"Plaintiffs in the instant case urge that the fact that the hospital involved here approves attendance of the father at cesarean section births distinguishes Fitzgerald.*3 The question, however, is not whether the hospital approves or not, but whether this factor as compared to Fitzgerald, so as to transform this interest into a 'fundamental right.' We hold that it does not."

The Petitioners do not attempt to argue that the fact that the hospital and

*3 The case of Fitzgerald v. Porter Memorial Hospital, 523 F2d 716 (7th Cir. 1975) had previously held that where the hospital objects, the parents have no right to be together in the Delivery Room of the objecting hospital at the birth of their child.

physician actively encourage the parents to be together during the cesarean birth somehow makes their rights a fundamental right. The Petitioners simply argue that, where neither the hospital nor physician object, they, as a family, have a fundamental right to be together during the birth of their child, whether that birth be by cesarean section or normal procedures. Indeed if the state may constitutionally prevent fathers and mothers from being together during the birth of their child at a hospital that encourages such participation it seems apparent that the state could prevent home delivery, insist on the number of days a mother and child remain in the hospital after birth, and so on.

Increasingly state bureaucracies, not accountable to the voter and too often

immune from the litigator, have sought to reach their tenticles into the private lives of both individuals and families without justification, compelling or otherwise. The present case offers this Court the unique opportunity of further defining the right of family privacy and of the power of the state to invade these privacy rights.

CONCLUSION

For the reason above stated, the Petitioners respectfully ask that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

PATRICK T. MURPHY

GOLDBERG & MURPHY, LTD.
33 N. LaSalle - Suite 2300
Chicago, Illinois 60602
(312) 782-4530

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

ARGUED January 30, 1978

DECIDED April 6, 1978

Before

HON. WALTER J. CUMMINGS, Circuit Judge

HON. ROBERT A. SPRECHER, Circuit Judge

HON. HARLINGTON WOOD, JR., Circuit Judge

ROBYN PRAETZ, PETER PRAETZ, and ALLEN CHARLES, M.D.,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Plaintiff-Appellants,	)	
NO. 77 - 2285 vs.	)	
PAUL Q. PETERSEN, M.D., Director, Department of Health, State of Illinois, MURRAY C. BROWN, M.D., Commissioner, Department of Health, City of Chicago,	)	NO. 77 C 4117
	)	Frank J. McGarr, Judge.
Defendants-Appellees.	)	

ORDER

The primary issue presented for review is the constitutionality of a state regulation

and a city memorandum interpreting it that prohibits a prospective father from being present in the delivery room during the birth of his and the prospective mother's child when the birth is by cesarean section and when both the attending physician and the hospital have consented to such presence.

I

Plaintiffs*[1] challenge as an intrusion of their rights of familial privacy an Illinois Department of Health Regulation 11-7.5, which pro-

*[1] The three plaintiffs in this suit were two parents and their physician. Although plaintiff parents did have their child prior to oral argument in this case, we do not find that this fact moots their claims. See Roe v. Wade, 410 U.S. 113, 125 (1973); Fitzgerald v. Porter Memorial Hospital, 523 F2d 716, 717 n.3 (1975). Also, since plaintiff parents can properly maintain this suit, we need not consider the question of their physician's standing. See Carey v. Population Services Interational, 431 U.S. 678, 682 (1977). Insofar as the physician's due process rights are advanced by plaintiff parents, see Fitzgerald, Supra, at 721-22.

vides that "no lay visitor shall be given access to the operating room during surgery," and a City of Chicago memorandum of July 21, 1976, prohibiting hospitals from allowing husbands or fathers access to operating rooms during cesarean section.*[2]

*[2] Counsel for defendant, Commissioner of the Chicago Department of Health, informed the court at oral argument that the Commissioner was re-examining his interpretation of the state regulation governing access to hospital operating rooms during surgery. The Commissioner, in supplemental briefs, sets forth eleven requirements which must be met before a father is not a "lay visitor" within the meaning of the state regulation. We initially question the power of the Commissioner as opposed to the Illinois Attorney General, to authoritatively interpret state regulations. See Ill. Rev. Stat. Ch. 14 §4. Moreover, it is not clear that the Commissioner's detailed eleven-point interpretation will not have the effect of prohibiting most fathers from being present in the operating room either completely or in any meaningful capacity. We therefore, do not believe that the issue is moot with respect to the Commissioner of Health of the City of Chicago. The conditions imposed are:

1. Both parents have attended prepared childbirth classes approved by the Board of Health, prior to the delivery;

2. Hospital procedures permit presence of the father during Cesarean (sic) Section.

3. The obstetrician has submitted the

The district court granted defendants' motion to dismiss on the basis of our prior decision in Fitzgerald v. Porter Memorial Hospital, 523 F2d 716 (7th Cir. 1975), cert. denied, 425 U.S. 916 (1976). Plaintiffs appeal and our jurisdiction derives from 28 U.S.C. §1291.

*2 (continued)

request of both the mother and father in writing to the chairman of the Department of Obstetrics and Gynecology at least one week prior to the scheduled Cesarean (sic) Section.

4. At the time of the section, the obstetrician, anesthesiologist and nursing supervisor for such procedure all concur in admitting the father.

5. The hospital, prior to the section, informs both parents that unforseen contingencies may preclude the father's presence at any time before, during, or after the procedure. He may at any time be directed to leave the room by the obstetrician, anesthesiologist or the nurse.

6. The father may be allowed in the delivery room only if the surgery is to be performed under regional anesthesia and not under general anesthesia.

II

Our analysis of plaintiff's challenge to the state regulation and policy in cesarean section birth cases must begin with Fitzgerald v. Porter Memorial Hospital, Supra, where this court held that it was not unconstitutional for a public hospital to prohibit a father from delivery rooms during all births. Plaintiffs there had sought to

*[2] (continued)

7. The father must be escorted to the operating room by a member of the nursing staff.

8. The father is allowed only after the anesthesia has been induced and the patient has been prepped and draped.

9. The father must be surgically gowned and masked and may sit only at the head of the table, to the side of the anesthesiologist; he may not stand up to watch the procedure.

10. If maternal sedation is indicated after birth, the father will be directed to leave the operating room.

11. Once the procedure is completed the father must leave the operating room and may not be allowed to enter the recovery room.

have their child by the LaMaze method of childbirth which requires the father's participation in the delivery room. The court conluded after a thorough analysis that the right of marital privacy did not include the right of either spouse to have the husband present in the delivery room.

Plaintiffs in the instant case urge that the fact that the hospital involved here approves attendance of the father at cesarean section births distinguishes Fitzgerald The question, however, is not whether the hospital approves or not, but whether this factor somehow increases the parents' interest sufficiently, as compared to Fitzgerald, so as to transform this interest into a 'fundamental right." We hold that it does not.

The cesarean section birth is a serious medical procedure and both the state and city defendants are responsible for the overall health policies in their jurisdictions. These policies have included a general ban on lay persons in

operating rooms and, in particular, a prohibition of the father in the delivery room during a cesarean section birth. Under these circumstances, we hold in accordance with Fitzgerald that the right of marital privacy does not include having the husband present in the delivery room during a cesarean section birth where this is prohibited by state health regulations.

For the reasons discussed above, the judgment of the district court granting defendants' motion to dismiss is affirmed.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBYN PRAETZ, PETER PRAETZ, and ALLEN CHARLES, M.D., Plaintiffs, v. PAUL Q. PETERSEN, M.D., Director, Department of Public Health, State of Ill., MURRAY C. BROWN, M.D., Commissioner, Department of Health, City of Chicago, Defendants.	)	NO. 77 C 4117

MEMORANDUM OPINION AND ORDER

This is an action seeking to have declared unconstitutional and to prevent enforcement of a memorandum issued by the Chicago Department of Health based on a regulation promulgated by the Department of Public Health of the State of Illinois, insofar as they prohibit a prospective father from being present in the delivery room during the birth of his and the prospective mother's child

when the birth is by cesarean section and when both the attending physician and the situs hospital have consented to such presence. Jurisdiction is predicated on 42 U.S.C. §1983 and 28 U.S.C. §1343(3). Plaintiffs are Robyn and Peter Praetz, a married couple expecting the birth of their child by cesarean section on or about January 10, 1978, and Dr. Allen Charles, a licensed physician attending to Mrs. Praetz. Defendants are the Director of the Department of Public Health of the State of Illinois and the Commissioner of the Department of Health of the City of Chicago.

The Illinois Department of Public Health regulation in question is Reg. 11-7.5, and states that "no lay visitor shall be given access to the operating room during surgery." The controverted memorandum issued by the Commissioner of the Chicago Department of Health is dated July 21, 1976 and reads, in pertinent part, as follows:

> It has been brought to the attention of the Department of Health that certain Chicago hospitals have permitted unauthorized persons in the operating rooms during the times of Cesarean (sic) section.
>
> Please be advised that all lay hospital visitors including husbands and/or fathers in labor-delivery sections shall be prohibited from access to operating rooms. This prohibition applies not only to designated operating rooms in labor-delivery sections of hospitals.

The plaintiff parents allege that this memorandum and the state regulation upon which it is based constitute an unwarranted intrusion by the state upon their rights of familial privacy, in contravention of the Due Process Clause of the Fourteenth Amendment. For this proposition, and its corollary proposition that the state must demonstrate a compelling interest on its part in order to sustain the restriction it has enforced, plaintiffs rely on Meyer v. Nebraska, 262 U. S. 390 (1923); Griswold v. Connecticut, 381 U.S. 479 (1965); Loving v. Virginia, 388 U.S. 1 (1967); Roe v. Wade, 410 U.S. 113 (1973); and Doe v.

Bolton, 410 U.S. 179 (1973).

Both defendants have moved to strike and dismiss the complaint for failure to state a claim and on other grounds.

We are guided in our disposition by a ruling by the Court of Appeals for the Seventh Circuit in Fitzgerald v. Porter Memorial Hospital, 523 F.2d 716 (1975). The issue in that case, as formulated by the court, was "whether a mother, her husband, or their doctor has a constitutional right to have the father present during the birth of a child." 523 F.2d at 717. In an opinion written by then Circuit Judge Stevens, the court thoroughly explored the nature of the right of familial privacy as a fundamental right as delineated by the Supreme Court in a line of cases which includes those relied upon by plaintiffs

here, and concluded that "the so-called right of marital privacy does not include the right of either spouse to have the husband present in the delivery room of a public hospital which, for medical reasons, has adopted a rule requiring his exclusion." 523 F.2d at 721. In distinguishing its case from the Roe case, supra, the court said, at 721:

> The birth of a child is an event of unequalled importance in the lives of most married couples. But deciding the question whether the child shall be born is of a different magnitude from deciding where, by whom, and by what method he or she shall be delivered. In its medical aspects, the obstetrical procedure is comparable to other serious hospital procedures. We are not persuaded that the married partners' special interest in their child gives them any greater right to determine the procedure to be followed at birth than that possessed by other individuals in need of extraordinary medical assistance.

In the case at bar, it is not the hospital that is forbidding the husband from attending the birth - indeed, the hospital encourages such attendance and has established health and safety procedures for the presence of the father at caesarean section births - but the state and city boards of health, and plaintiffs would have us refuse to follow the obvious import of the Fitzgerald case on the basis of this distinction. The real issue in this case, then, if we follow plaintiffs' urging, is whether or not the fact that the parents, the attending physician, and a reputable hospital all agree that the father's attendance at the caesarean birth is desireable and can be accomplished safely, somehow increases the strength of the parents' wish

sufficiently for that wish to take on the characteristics of a "fundamental right." We hold that it does not.

The plaintiff physician's theory in attacking the memorandum and the regulation in question is that they constitute an improper restriction by the state on his right to practice his profession. But the Seventh Circuit expressly rejected that contention in the Fitzgerald case (523 F.2d at 722), and that decision is amply supported by authoritative case law. See Williamson v. Lee Optical of Oklahoma, 348 U.S. 483 (1954); Ferguson v. Skrupa, 372 U.S. 726 (1963).

Plaintiffs' equal protection argument is equally without merit.

This court sympathizes with the plaintiff parents' desire to enjoy a familial experience with the encourage-

ment and assistance of a competent physician and a reputable hospital, as well as it sympathizes with the frustration each of the parties must feel in the face of what might well be a short-sighted regulation. But the question presented in this motion to dismiss is a matter to be controlled by the law. and not by sympathy.

Accordingly, for the reasons set forth herein, defendants' motion to strike and dismiss the complain is granted.

ENTER:

FRANK McGARR

UNITED STATES DISTRICT JUDGE

DATED: December 20, 1977

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBYN PRAETZ, PETER PRAETZ, and ALLEN CHARLES, M.D.,	)	
Plaintiffs,	)	
v.	)	
PAUL Q. PETERSEN, M.D., Director, Department of Public Health, State of Ill., MURRAY C. BROWN, M.D., Commissioner, Department of Health, City of Chicago,	)	NO. 77 C4117
Defendants.	)	

C O M P L A I N T

JURISDICTION AND VENUE

1. This is a Complaint for declaratory and injunctive relief, to have declared unconstitutional and to prevent the enforcement of a 21 July 1976 Memorandum of the Chicago Board of Health and Regulation 11-7.5 of the Department of Public Health of the State of Illinois,

insofar as they prohibit prospective fathers from being present in the delivery room with the consent of the treating physician and hospital, during the birth of their child when such birth is by caesarean section.

2. This Court has jurisdiction pursuant to the provisions of the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States; 28 U.S.C. §1331 and 1343; 28 U.S.C. §2201, 2202, 28 U.S.C. §2281, 2284; and 42 U.S.C. §1983.

PARTIES

3. Robyn and Peter Praetz are citizens and residents of the City of Chicago, State of Illinois. They are a married couple expecting the birth of

their third child, second natural child, on or about January 10, 1978. The child will be born by caesarean section rather vaginal delivery.

4. Plaintiff Allen Charles, M.D., is a registered and licensed physician in the State of Illinois. Dr. Charles is actively engaged in the practice of obstetrics and gynaecology and is currently on the staff of Michael Reese Hospital, Chicago, Illinois. He is a Board Certified Fellow of the American College of Obstetrics and Gynaecology and is a Fellow of the American College of Surgeons. Dr. Charles is the Praetzs' treating physician, and has determined, in his best medical judgement and after counseling, evaluation and preparation, that the birth process would be aided by the presence of Peter Praetz in the

delivery room during the birth of the Praetzs' child by caesarean section.

5. Paul Q. Petersen, M.D., is the Director of the Department of Public Health of the State of Illinois, a state agency.

6. Defendant Murray C. Brown, M.D., is the Commissioner of the Department of Health of the City of Chicago, Illinois, a city agency.

FACTS

7. Peter Praetz and Robyn Praetz are expecting a child on or about January 10, 1978.

8. The treating physician is Dr. Allen Charles.

9. In Dr. Charles' considered medical judgement, the Praetzs' child

must be delivered by caesarean section.

10. In Dr. Charles' considered medical judgement, and after counselling with the Praetzs, evaluating them and preparing them therefore, it would be beneficial for Robyn Praetz and for the health of the prospective child for Peter Praetz to be present during delivery of the child.

11. The Praetzs believe deeply that childbirth is the unique experience to be shared by the prospective parents and also feel that a good deal of physical and moral support may be offered by Peter Praetz to Robyn Praetz if he is permitted to be present during delivery. Dr. Charles agrees with this accessment.

12. The caesarean section on Robyn Praetz is scheduled to be performed on January 10, 1978, at Michael Reese

Hospital in Chicago, Illinois.

13. Michael Reese Hospital is willing and able to allow to the presence of Peter Praetz in the delivery room during the caesarean delivery of his child so long as the treating physician so orders. In the past (before the Brown Memorandum) Michael Reese did allow the presence of fathers during caesareans. Toward this end the hospital promulgated a regualtion. (App. 1)

14. After the Brown Memorandum of 21 July 1976 Reese disallowed the further presence of prospective fathers in caesarean section deliveries. Plaintiffs Praetzs called and wrote the Department of Health to determine on what grounds the 21 July Memorandum was based. They were informally told it was based on the state regulation complained of herein.

The Praetzs wrote Defendant Brown asking for a waiver but it was denied.

15. Provisions of the Chicago Department of Health and of the Department of Public Health of the State of Illinois violate Plaintiffs, Peter and Robyn Praetz's right to be free from unwarranted State intrusion into the ambits of privacy which surround and protect their familial relationship. This right of familial privacy is found in both due process clause of the Fourteenth Amendment and in a penumbra of rights emanating from the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

16. The regulations in question here place unconstitutional governmental restraints upon the right of Plaintiff Charles to practice his profession of medicine in violation of the due process

clause of the Fourteenth Amendment.

17. The regulations in question violate the equal protection rights of Plaintiffs, Peter and Robyn Praetz, inasmuch as both regulations in question are overinclusive. They include within the class not only those parents who wish to be together during delivery but who are at a hospital which is unable to accomodate them but also parents as the Plaintiffs who wish to delivery in a hospital which is equipped and willing to allow the father in the operating room and has a regulation protecting the health and safety of all those in said delivery room.

18. In September, 1976 in case No. 76 C 3600, Plaintiffs Peter and Natalie Miller filed a law suit identical to the present one. In that cause the Honorable

Alfred Kirkland entered a Temporary Restraining Order (App. 2) allowing the husband, Peter J. Miller, to be in the Delivery Room during the caesarean section delivery of his wife. (Peter J. Miller ultimately did appear in the Delivery Room with Natalie during the birth of their child.)

19. The Praetzs' first natural child was delivered by caesarean section with her husband being present during the birth. This birth occurred in Boston, Massachusetts. After moving to Chicago and realizing that she would give delivery in January, she communicated with Defendant Brown (App. 3) to determine if the regulation in question had been changed after the Temporary Restraining Order entered by Judge Kirkland. In response to her letter Defendant Brown stated

that "current regulations of the Department of Health do not permit husbands to be present in operating rooms of licensed Chicago hospitals. The reference you cited to the ruling of the United States District Court concerning the above matter was applicable to a single individual and to a specific hospital on a single occasion of childbirth. The ruling did not apply to all individuals in similar future circumstances." (App. 4)

RELIEF REQUESTED

20. The Plaintiffs respectfully ask that this Court issue a declaratory judgement, after a hearing, holding the regulation in question to be in violation of the rights of the Plaintiffs protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution and, as such, have no effect.

21. The Plaintiffs respectfully ask that this Court issue a permanent inunction, without bond, restraining the enforcement, operation or execution of the regulations in question by restraining the Defendants, their agents, employees, appointees and successors from enforcing, threatening to enforce or otherwise applying said regulation in derrogation to the rights of the Plaintiffs.

22. The Plaintiffs respectfully ask that this Court issue any other relief it deems fit and appropriate.

Respectfully submitted,

PATRICK T. MURPHY

GOLDBERG & MURPHY, LTD.
33 N. LaSalle - Suite 2300
Chicago, Illinois 60602
(312) 782-4530

City of Chicago
DEPARTMENT
OF HEALTH
Chicago Civic Center
Chicago, Illinois 60602

Richard J. Daley
Mayor

Murray C. Brown, M.D.
Commissioner

Edward F. King, R.S.
Assistant Commissioner

July 21, 1976

MEMORANDUM

To: Administrators, Licensed Chicago Hospitals

From: Murray C. Brown, M.D.
Commissioner
Department of Health

Subject: Visitors in Operating Rooms

It has been brought to the attention of the Department of Health that certain Chicago hospitals have permitted unauthorized persons in the operating rooms during the times of Cesarean section.

Please be advised that all lay hospital visitors including husbands and/or fathers in labor-delivery sections shall be prohibited from access to operating rooms. This prohibition applies not only to general surgical operating rooms but also to designated operating rooms in labor-delivery sections of hospitals.

The Department of Health expects absolute compliance to the foregoing regulation.

Thank you for your continued cooperation.

Murray C Brown

Murray C. Brown, M.D.
Commissioner

A father may be granted administrative approval to be present during his wife's Cesarean Section delivery in the Delivery Suite if all the criteria listed below have been met.

1. The obstetrician must submit the request in writing to the chairman of the Department of Obstetrics and Gynecology at least one week prior to the scheduled Cesarean Section (permission will not be granted for emergency procedures).

2. There is concurrence by the obstetrician, pediatrician and anesthesiologist in attendance, as well as the nursing supervisor in the labor and delivery corridor, at the time of section.

3. Prior to allowing the father to attend the Cesarean section delivery both parents must be made aware of the hospital policy pertaining to this procedure and must also be aware of the fact that certain unforeseen contingencies may preclude the father's presence at any time before, during or after the procedure.

4. The father may only be allowed in the delivery room if the Cesarean section is to be performed under regional anesthesia and not under general anesthesia.

5. The father may be allowed in the delivery room only after the anesthesia has been induced and the patient has been prepped and draped.

6. The father, apropriately gowned and masked, may then enter the delivery room. He must sit at the head of the table, to one side of the anesthetist, where he can talk to his wife. He should not stand up and watch the procedure.

7. He must be instructed that if at any time during the procedure difficulties of any sort arise, the obstetrician, anesthesiologist or the nurse may request the father to leave the delivery room.

8. After the baby is born, if maternal sedation is indicated, the father will then be asked to leave the operating room.

9. The father must be escorted to the operating room by a member of the nursing staff.

10. The father must leave the operating room once the procedure is completed and may not be allowed to enter the recovery room.

11. The mother and father must have attended prepared childbirth classes prior to the delivery.

Please note that administrative approval will be granted on individual cases only, provided that all the above criteria have been met.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER J. MILLER, NATALIE MILLER AND ALLEN CHARLES, M.D.,	)	
Plaintiffs,	)	
v.	)	
JOYCE C. LASHOF, M.D., Director of the Department of Public Health of the State of Illinois; and MURRAY C. BROWN. M.D., Commissioner of the Department of Health of the City of Chicago, Illinois,	)	NO. 76 C 3600
Defendants.	)	

ORDER

This cause having been heard pursuant to Plaintiffs' Motion For a Temporary Restraining Order and Preliminary Injunction, with the Plaintiffs being represented by their counsel, Patrick T. Murphy, and the Attorney General of the State of Illinois and the Corporation Counsel of the City of Chicago, appearing and presenting arguments though not entering written appearances on behalf of the Defendants herein, this Court having heard the arguments of all counsel, the testimony of one of the Plaintiffs, having considered the Complaint and Memorandum of Law, and, it appearing to the Court after due deliveration that unless a temporary restraining order is granted herein Plaintiff Peter Miller may be precluded from being present when his wife gives

birth of their child who is due to be born before this action may be determined on its merits, due to the existence and effect of the challenged regulations of the City of Chicago, Department of Health and the Illinois Department of Public Health, due to the irreparable injury and damage to Plaintiffs Peter and Natalie Miller, it is this 29th day of September,

ORDERED that the Defendants, Murray C. Brown, M.D., Director of the City of Chicago, Department of Health and Joyce C. Lashof, M.D., Director of the State of Illinois, Department of Public Health and each of them, their employees, agents and successors in office, be and they hereby are restrained and enjoined until further order of this Court, from prosecuting Peter Miller, Natalie Miller and Allen Charles, M.D. and from taking any action against Michael Reese Hospital, or any member of its staff or board for violating the challenged regulations in permitting Peter Miller to be present in any delivery or operating room of Michael Reese Hospital while his wife is delivering their child.

ENTER:

ALFRED Y. KIRKLAND

UNITED STATES DISTRICT JUDGE

DATED: September 29, 1976

GOLDBERG & MURPHY, LTD.

JEROME F. GOLDBERG
PATRICK T. MURPHY
RONALD GOLDBERG

Suite 4000
33 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602
(312) 782-4520

August 26, 1977

Dr. Murray Brown, Commissioner
Department of Health
Richard J. Daley Center
Chicago, Illinois

RE: Department of Public Health Regulation 11 - 7.5

Dear Dr. Brown,

I am writing on behalf of clients who are expecting a child in January via a caesarean section and who wish that the husband be in the Delivery Room during this operation. Their physician is in accord with their wishes.

On 21 July 1974 you sent a Memorandum to the various administrators of Chicago hospitals forbidding husbands in the Delivery Room during a caesarean section delivery. Subsequent to this, the United States District Court (the Honorable Alfred Y. Kirkland) issued a Temporary Restraining Order allowing Peter Miller in the Delivery Room during the birth of a child by his wife by caesarean section delivery.

Our clients would like to know your present position regarding caesarean section delivery in light of Judge Kirkland's ruling.

If you need additional information we would be happy to provide it to you.

Thank you.

Sincerely,

PATRICK T. MURPHY

PTM/ls
cc: William Quinlin, Esq.
Paul Q. Peterson, M.D., Director
Department of Public Health

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael A. Bilandic
Mayor

DEPARTMENT
OF HEALTH
Richard J. Daley Center
Chicago, Illinois 60602

Murray C. Brown, M.D.
Commissioner

Edward F. King, R.S.
Deputy Commissioner

7 September, 1977

Mr. Patrick T. Murphy
Goldberg & Murphy, Ltd.
33 North LaSalle Street, Suite 2300
Chicago, Illinois 60602

Dear Mr. Murphy:

This is in reply to your letter of 26 August, 1977 requesting the position of the Department of Health on the matter of a husband in the delivery room of a licensed Chicago hospital during the time of cesarean section upon his wife.

Please be advised that current regulations of the Department of Health do not permit husbands to be present in operating rooms of licensed Chicago hospitals. The reference you cited to the ruling of the United States District Court concerning the above matter was applicable to a single individual and to a specific hospital on a single occasion of childbirth. The ruling did not apply to all individuals in similar future circumstances.

The Department of Health is pleased to be of service to you.

Very truly yours,

Murray C. Brown, M.D.
Commissioner

CC: Dr. A. G. Cesare

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MERLE GROSS, BARRY GROSS and ALLAN C. CHARLES, M.D.	)	
Plaintiffs	)	
-vs-	)	
MURRAY C. BROWN, M. D. Commissioner of Health of the City of Chicago, and RICHARD L. CURRY, Corporation Counsel of the City of Chicago	)	No. 70 C 1226
	)	CIVIL ACTION
Defendants	)	

FINDINGS OF FACT AND CONCLUSION OF LAW

The motion of plaintiffs for a temporary restraining order having come on for hearing on June 1, 1970, and the Court having considered the Complaint herein, the affidavits and plaintiffs' memoranda submitted in support of said motion, defendants' memorandum in opposition to said motion, the additional documents of record herein, arguments of all counsel and oral evidence in said hearing, hereby adopts the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. Plaintiff, Merle Gross is pregnant and expects to deliver her child on or about June 14, 1970, during the pendency of the action and before same can be heard and determined on the merits.

2. Plaintiffs Merle and Barry Gross have been prepared for a psychoprophylactic method of childbirth wherein the husband is trained to assist his wife in the delivery room both physically and psychologically by supporting and encouraging her.

3. There is currently existing a Chicago Board of Health Regulation which provides:

> No lay visitors including relatives shall be permitted in the delivery rooms or nurseries.

4. Plaintiffs contend that said regulation is unconstitutional in that it is overbroad, vague and deprives plaintiffs Merle and Barry Gross of their familial right of privacy.

5. There is currently existing a State of Illinois - Illinois Hospital Licensing Act Regulation which provides:

> No lay visitor, including relatives (other than husband as provided hereinafter), shall be permitted in delivery rooms or nurseries.
>
> The presence of the husband in the delivery room shall be discretionary with the individual hospital. If the husband is to be admitted to the delivery room of any hospital, the hospital shall first have adopted a policy statement on the matter which, among other things, establishes the following conditions:
>
> (1) Consent of both the mother and the attending physician.
>
> (2) Prior orientation preparation of the husband and mother to this experience; and
>
> (3) Application of safeguards against the husband's introduction of infection or other hazards.

6. The presence of Barry Gross in the delivery room at Michael Reese Hospital at the time his wife is delivering their child will not constitute a health hazard.

7. Unless the defendants are restrained from enforcing the challenged regulation, Plaintiff, Barry Gross will be precluded from being in the delivery room for the birth of Plaintiffs' Merle and Barry Gross's child and that they will suffer irreparable injury and undue emotional stress.

8. Plaintiffs are without adequate remedy at law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the action under 28 U.S.C. Sec. 1343(3), 2201-2202.

2. The challenged regulation is unconstitutional in that it is overly broad and goes beyond that which is reasonable and necessary in the exercise of the police power and protection of the public health, safety and welfare.

3. That the presence of the husband in the delivery room shall only be at the discretion and direction of the hospital and attending physician and in compliance with the State of Illinois Hospital Licensing Act Regulation Sec. 15-311(e).

4. Plaintiffs are entitled to a temporary restraining order restraining and enjoining the defendants, Murray C. Brown, M. D. Commissioner of Health of the City of Chicago and Richard L. Curry, Corporation Counsel of the City of Chicago, and each of them, their employees, agents and successors in office, from prosecuting Barry Gross, Merle Gross and Allan G. Charles, M. D. and from taking any action against Michael Reese Hospital, or any member of its staff or Board for violating the challenged Chicago Board of Health Regulation in permitting Barry Gross to be present in the delivery room at Michael Reese Hospital while his wife is delivering their child.

ENTER:

Alexander A. Napoli

UNITED STATES DISTRICT JUDGE

DATED: June 3, 1970

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MERLE GROSS, BARRY GROSS and ALLAN G. CHARLES, M. D.	)	
Plaintiffs	)	
-vs-	)	
MURRAY C. BROWN, M. D. Commissioner of Health of the City of Chicago, and RICHARD L. CURRY, Corporation Counsel of the City of Chicago	)	No. 70 C 1226
	)	CIVIL ACTION
Defendants	)	

ORDER

THIS CAUSE coming on to be heard on Plaintiffs' Motion for a temporary restraining order and the Court having considered the complaint, the affidavits and plaintiffs' memoranda in support of said motion, defendants' memorandum in opposition to said motion, the additional documents of record herein, arguments of all counsel and oral evidence in said hearing, and, it appearing to the Court after due deliberation that unless a temporary restraining order is granted herein, Plaintiff Barry Gross may be precluded from being present in the delivery room at Michael Reese Hospital when his wife gives birth to their child who is due to be born before this action may be determined on its merits, due to the existence and effect of the challenged Board of Health Regulation

to the irreparable injury and damage to plaintiffs Merle Gross and Barry Gross, and the Court having made and filed its findings of facts and conclusions of law, it is this Third day of June, 1970,

ORDERED that the Defendant, Murray C. Brown, M. D. Commissioner of Health of the City of Chicago, and Richard L. Curry, Corporation Counsel of the City of Chicago, and each of them, their employees, agents and successors in office, be and they hereby are restrained and enjoined until further order of this Court, from prosecuting Barry Gross, Merle Gross and Allan G. Charles, M.D. and from taking any action against Michael Reese Hospital, or any member of its staff or board for violating the challenged Chicago Board of Health Regulation in permitting Barry Gross in the delivery room of Michael Reese Hospital while his wife is delivering their child.

ENTER:

Alexander J. Napoli

UNITED STATES DISTRICT JUDGE

DATED: June 3, 1970

Supreme Court, U. S.
FILED
AUG 3 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-59

ROBIN PRAETZ, PETER PRAETZ and ALLEN CHARLES, M.D.,

Petitioners,

vs.

PAUL Q. PETERSON, M.D., Director, Department of Public Health, State of Illinois, and MURRAY C. BROWN, M.D., Commissioner, Department of Health, City of Chicago,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT CHICAGO COMMISSIONER OF HEALTH

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,

Counsel for Respondent,
Dr. Brown, Commissioner of Health,
City of Chicago.

DANIEL PASCALE,
EDMUND HATFIELD,
Assistant Corporation Counsel,
Of Counsel.

Midwest Law Printing Co., Chicago 60601, FInancial 6-3988

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE WRIT	5
CONCLUSION	8

CITATIONS

Cases

Ferguson v. Skrupa, 372 U.S. 726 (1963)	7
Fitzgerald v. Porter Memorial Hospital, 523 F.2d 716 (7 Cir. 1975), cert. den. 425 U.S. 916 (1976)	5
Griswold v. Connecticut, 381 U.S. 484 (1965)	5
Jacobson v. Massachusetts, 197 U.S. 11 (1905)	6
Roe v. Wade, 410 U.S. 113 (1973)	5

Statute

Illinois Rev. Stat., ch. 14, par. 4	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-69

ROBIN PRAETZ, PETER PRAETZ and ALLEN CHARLES, M.D.,

Petitioners,

vs.

PAUL Q. PETERSON, M.D., Director, Department of Public Health, State of Illinois, and MURRAY C. BROWN, M.D., Commissioner, Department of Health, City of Chicago,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT CHICAGO COMMISSIONER OF HEALTH

OPINIONS BELOW

The opinion of the District Court for the Northern District of Illinois, Eastern Division, is unreported, but is reproduced in Appendix B of the petition for certiorari (pp. 23-30).

The opinion of the Court of Appeals for the Seventh Circuit is also unreported, but is reproduced in Appendix A of the petition for certiorari (pp. 16-22).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition for certiorari.

QUESTIONS PRESENTED

(1) Whether the State, in the exercise of its police power to protect the public health, and a municipality, under its delegated police power, may enact and enforce regulations excluding non-medical persons, including spouses, from the operating rooms of hospitals, during surgery.

(2) Whether the liberty secured by the Constitution of the United States to every person within its jurisdiction imports an absolute right in each person, in the exercise of his or her family relationships, to be wholly freed from the obligation to conform to general health regulations.

STATEMENT OF THE CASE

The statement of the case set forth on pages 5 through 10 of the petition for certiorari is correct. However it does not indicate the position of the Chicago Department of Health in this controversy. That is set forth in footnote 2 of the opinion of the court of appeals, reproduced in Appendix A on pages 18 through 20 of the petition for certiorari. This states:

> *2 Counsel for defendant, Commissioner of the Chicago Department of Health, informed the court at oral argument that the Commissioner was reexamining his interpretation of the state regulation governing access to hospital operating rooms during surgery. The Commissioner, in supplemental briefs, sets forth eleven requirements which must be met before a father is not a "lay visitor" within the meaning of the state regulation. We initially question the power of the Commissioner as opposed to the Illinois Attorney General, to authoritatively interpret state regulation. See *Ill. Rev. Stat.* Ch. 14 § 4 . . . The conditions imposed are:
>
> 1. Both parents have attended preparatory childbirth classes approved by the Board of Health, prior to the delivery.
> 2. Hospital procedures permit presence of the father during Cesarean Section.
> 3. The obstetrician has submitted the request of both the mother and father in writing to the chairman of the Department of Obstetrics and Gynecology at least one week prior to the scheduled Cesarean Section.
> 4. At the time of the section, the obstetrician, anesthesiologist and nursing supervisor for such procedure all concur in admitting the father.
> 5. The hospital, prior to the section, informs both parents that unforeseen contingencies may preclude the father's presence at any time before, during, or after the procedure. He may at any time be directed to leave the room by the obstetrician, anesthesiologist or the nurse.
> 6. The father may be allowed in the delivery room only if the surgery is to be performed under regional anesthesia and not under general anesthesia.

7. The father must be escorted to the operating room by a member of the nursing staff.
8. The father is allowed only after the anesthesia has been induced and the patient has been prepped and draped.
9. The father must be surgically gowned and masked and may sit only at the head of the table, to the side of the anesthesiologist; he may not stand up to watch the procedure.
10. If maternal sedation is indicated after birth, the father will be directed to leave the operating room.
11. Once the procedure is completed the father must leave the operating room and may not be allowed to enter the recovery room.

REASONS FOR DENYING THE WRIT

This is an interesting case and the petition for certiorari (p. 11) is certainly correct in asserting that it would afford "this Court the opportunity of further defining the boundaries of the right of familial privacy." However, the decisions of both the district court and the court of appeals in this case are so clearly correct that it cannot be claimed that the case raises any novel question of federal law. Nor is the petition able to point to any conflict between circuits that might qualify as a valid reason for the grant of a writ of certiorari.

The result below is not in conflict with any decision of this Court. Invocation by the petitioners of *Griswold v. Connecticut*, 381 U.S. 484 (1965) and *Roe v. Wade*, 410 U.S. 113 (1973), "will not", in Justice Holmes' phrase, "wash." The distinction between them and the present matter was accurately drawn in *Fitzgerald v. Porter Memorial Hospital*, 523 F.2d 716 (7 Cir. 1975), cert. den. 425 U.S. 916 (1976). There Mr. Justice Stevens, then a circuit judge, concluded:

> "The birth of a child is an event of unequalled importance in the lives of most married couples. But deciding the question whether the child shall be born is a different magnitude from deciding where, by whom, and by what method he or she may be delivered. In its medical aspects, the obstetrical procedure is comparable to other serious hospital procedures. We are not persuaded that the married partners' special interest in their child gives them any greater right to determine the procedure to be followed at birth than that possessed by any other individuals in need of extraordinary medical assistance."

The authority of the State and the delegated authority of the City to enact and enforce, under the police power, health and safety laws and regulations are fundamental. As long ago as 1905 this Court in *Jacobson v. Massachusetts*, 197 U.S. 11, so held in rejecting the contention that compulsory vaccination derogates from the liberty guaranteed by the Fourteenth Amendment. The first Justice Harlan, writing for the Court, declared:

> "The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination, that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every free man to care for his own body and health in such a way as to him seems best.
> 1 . . .
> "It seems to the Court that an affirmative answer to these questions would practically strip the legislative department of its function to care for the public health and public safety . . ."

Michael Reese Hospital is not a party to this lawsuit and petitioners do not appear to be authorized to speak for that or any other hospital. But accepting as accurate the representation in their petition that the governing physicians at Michael Reese are of the opinion that the father can be permitted to be present during a cesarean section delivery provided very detailed precautions are taken (R. 7, App. 1), that amounts at most to no more than an assertion that there are different schools of medical opinion on the subject, and the dominant medical opinion at Michael Reese is not in agreement with the medical opinion of the State and City health authorities.

The federal courts do not sit as super-legislatures to weigh the wisdom of legislation or administrative

regulations. The Due Process Clause does not authorize the federal courts to invalidate health and safety regulations because they are out of harmony with a particular school of thought. *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

Health regulations are of general application. Michael Reese is one of the largest and best equipped hospitals in Chicago; it may be able safely to permit fathers to be present in its operating rooms during cesarean deliveries. But there are many hospitals in the state—large and small—good, bad and indifferent. Many of these hospitals may not be able to cope with the presence of laymen at surgical operations. The facilities in some hospitals may be such that lay persons could not be present without interfering with the privacy of other patients. Their presence might increase the possibility of contamination. Their emotional outbursts might disrupt the performance of the operation. The health authorities of the State and City are no doubt much more familiar with hospital conditions in general than the plaintiffs or even the governing physicians at Michael Reese; it is their duty to be cognizant of what is generally feasible and they act in furtherance of a most compelling state interest—the public health.

If the State and City health authorities are mistaken, the remedy is to persuade them of that through medical channels. Certainly Michael Reese is an influential institution and can make its views heard, if it chooses. But courts do not have the competence to determine which medical opinion is correct.

CONCLUSION

For the foregoing reason, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM R. QUINLAN,
Corporation Counsel of the City of Chicago,
511 City Hall, Chicago, Illinois 60602,

Counsel for Respondent,
Dr. Brown, Commissioner of Health,
City of Chicago.

DANIEL PASCALE,
EDMUND HATFIELD,
Assistant Corporation Counsel,
Of Counsel.

August 2, 1978